

1
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481

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6 In the Matter of:

7
8 DELPHI CORPORATION,

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10 Debtor.

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13
14 United States Bankruptcy Court

15 One Bowling Green

16 New York, New York

17
18 December 20, 2007

19 10:06 AM

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21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE
24
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1
2 HEARING re Automodular Motion to Compel Assumption or Rejection
3 of Executory Contracts And To Allow Payment of Administrative
4 Claim

5
6 HEARING re Motion for Authority to Continue Claims Objection
7 Procedures

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9 HEARING re Fifth Section 1121(d) Exclusivity Extension Motion

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11 HEARING re Interiors and Closures Businesses Sale Motion

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13 HEARING re Twenty-Third Omnibus Claims Objection

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15 HEARING re Steering Sale Motion

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17 HEARING re Debtors' Motion for Default Judgment Against
18 Furukawa

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24 Transcribed by: Clara Rubin
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P R O C E E D I N G S

THE COURT: Please be seated. Okay. Delphi Corporation.

MR. BUTLER: Your Honor, good morning. Jack Butler and Kayalyn Marafioti from Skadden on behalf of Delphi Corporation for our twenty-sixth time at this hearing. We're in the month of December, 2007. Your Honor, we filed the proposed hearing agenda and we propose to take the matters in the order on the agenda.

THE COURT: Okay.

MR. BUTLER: The first matter on the agenda is the Automodular motion to compel assumption or rejection at docket number 11180. The movant has asked -- they weren't prepared to go forward and asked to move this forward to the January 25th omnibus hearing, seeing as this is a motion against the debtors for assumption or assignment. We had no issue with that and would agree to adjourn.

THE COURT: Okay.

MR. BUTLER: Your Honor, matter number 2 on the agenda is our motion seeking authority to continue the claims objection procedures that we've had in this case, notwithstanding the effectiveness of new bankruptcy rule 3007(c) as amended effective December 1 of this year. This is docket number 11187. As I mentioned, there have been no objections filed.

1 In summary, Your Honor, what we're asking the Court
2 to do is to, in consideration of the claimant's procedures
3 we've had in this case, Your Honor, as previously approved,
4 including specifically the particularized notice that we give
5 to each objector -- excuse me, each claimant that we're
6 objecting to, we're asking Your Honor to, notwithstanding 3007,
7 to grant us certain relief and allow us to continue essentially
8 the claims procedures that have been in this case throughout
9 the course of the case.

10 The one additional exhibit that we would create for
11 the omnibus claims objections would be an alphabetical list of
12 all claimants' names and related proof of claim numbers
13 contained in the omnibus claims objection. We would add
14 that -- in addition to the individualized, particularized
15 notice, we would add that to the objection. But, otherwise, we
16 would continue the notice that Your Honor has approved
17 previously.

18 We have sought relief in this motion to continue to
19 put more than one hundred claims on a single omnibus claims
20 objections to continue to make books and records objections and
21 to continue to modify security or priority status as part of
22 these objections, and would ask Your Honor, in the absence of
23 any objections from any party, to grant the relief requested.

24 THE COURT: Okay. I'll do that. You highlighted the
25 three potential divergences from the rule. The first one's

1 dealt with by the particularized notice. I think the other two
2 are dealt with by the claimant's procedures order which
3 provides for adjournment and a combined reconciliation and
4 discovery process for books and records and priority unsecured
5 claim objections. So it seems to me that this is what the
6 drafters of the rule meant by giving the courts the authority
7 to modify the rule under 3007(c), so I'll do that.

8 MR. BUTLER: Thank you, Your Honor. Your Honor,
9 matter number 3 on the agenda is the company's fifth
10 exclusivity extension motion filed with docket number 11188.
11 Currently, the debtors had the exclusive right to file a plan
12 of reorganization through and including December 31, 2007 and
13 to solicit acceptances through and including February 29, 2008.
14 In our motion, we've asked to extend those dates to
15 March 31, 2008 and May 31, 2008, respectively. No objections
16 have been filed by any party, Your Honor, to the relief
17 requested.

18 THE COURT: Okay. In light of that fact, as well as
19 the statements in the motion and the current status of the
20 case, I'll grant the motion.

21 MR. BUTLER: Thank you, Your Honor. Your Honor, the
22 next matter on the agenda is the Interiors and Closures
23 business sale motion filed with docket number 10606. This is,
24 Your Honor, the sale hearing with respect to that motion.
25 Previously, Your Honor, I had heard a bidding procedures order

1 at docket number 10732, and pursuant to that order any
2 competing bids were due at 11 a.m. on November 26, 2007. The
3 selling debtor entities did not receive any bids and
4 consequently no auction was conducted on December 6 that had
5 been tentatively scheduled.

6 Your Honor, this sale is for an aggregate purchase
7 price of 106 million dollars, including a preliminary purchase
8 price of 80 million dollars, subject to certain adjustments and
9 postclosing payments totaling 26 million.

10 Today, Your Honor, we seek to have an order
11 authorizing and approving the sale to the stalking horse as
12 described in the motion, as well as approval of the assumption
13 assignment of the assumed contracts and the assumption of
14 assumed liabilities.

15 There was an objection to the sale motion filed by
16 Siemens at docket number -- and it was actually withdrawn.
17 It's been resolved, rather. Docket number 11446. There was
18 also, and it received some publicity at one point in time, an
19 objection filed by Chrysler, docket number 11062. I would note
20 on the record that they withdrew that objection at docket
21 number 11518.

22 There have been, Your Honor, a series of other
23 objections filed but they're basically cure objections,
24 objections to cure objections of assumptions and assignment.
25 There were twenty-eight of those objections filed. The debtors

1 have resolved thirteen of those objections and would propose to
2 have fifteen of -- the other remaining fifteen of those
3 objections adjourned as a procedure to provide to the January
4 omnibus hearing as we continue to try to work through those.
5 On the extent there's an issue, we would then ask the Court to
6 resolve them.

7 With respect to the settled objections, those
8 settlements were based on the various statements we put in our
9 omnibus reply, which I'll not repeat here on the record. I'll
10 simply incorporate that by reference here in the record. There
11 was an additional statement in connection with the objection
12 resolving the objection filed by Mercedes. That was to make it
13 clear that the resolution set forth in the reply was agreed to
14 among the debtors, Mercedes and the purchasers. Thus, I agreed
15 to state on the record here that the resolution recited in the
16 reply does represent an understanding reached among the
17 debtors, Mercedes and the buyer, just so that is clear as we
18 would move forward here.

19 Your Honor, I also, in connection with this matter,
20 so the record -- we have a full record here, there is -- has
21 been a exhibit book put together that has forty-two exhibits in
22 it that evidence all the matters for this sale hearing.
23 Exhibit 1 would be the declaration. Exhibits 2 through 5 are
24 the basic motion documents. Exhibits 6 through 11 are all the
25 notices with respect to executory contracts. Exhibits 12

1 through 38 represent the various objections that have been
2 filed. Exhibit 39 is the objection of the sale motion that was
3 resolved with Siemens. And then exhibits 40 to 42 are the
4 affidavits relating to service of all the matters in connection
5 with the hearing. Your Honor, I'd like to move admission of
6 Exhibits 1 through 42 into the record.

7 THE COURT: Okay. Does anyone object to the
8 admission of those documents into evidence?

9 MR. BUTLER: And, Your Honor, that would include
10 Exhibit number 1, the declaration of Mr. Sheehan in support of
11 this, which is marked highly confidential and which we've
12 also -- would also move into the record and make available if
13 the Court has any questions or anyone wants to examine.
14 (Highly confidential declaration of Mr. Sheehan was hereby
15 received as Debtor's Exhibit 1 for identification, as of this
16 date.)

17 (Basic motion documents were hereby received as Debtor's
18 Exhibits 2 through 5 for identification, as of this date.)

19 (Notices with respect to executory contracts were hereby
20 received as Debtor's Exhibits 6 through 11 for identification,
21 as of this date.)

22 (Various objections filed were hereby received as Debtor's
23 Exhibits 12 through 38 for identification, as of this date.)

24 (Objection of sale motion resolved with Siemens was hereby
25 received as Debtor's Exhibit 39 for identification, as of this

1 date.)

2 (Affidavits relating to service of all matters in connection
3 with hearing were hereby received as Debtor's Exhibit 40
4 through 42 for identification, as of this date.)

5 THE COURT: Okay. Does anyone want to cross-examine
6 Mr. Sheehan on his declaration in support of the sale? All
7 right.

8 MR. BUTLER: Your Honor, I think we had previously
9 described Entebbe to the Court as a wholly owned subsidiary of
10 the Renco Group, Inc., and unless the Court has any specific
11 questions about our papers or about the proposed treatment of
12 the objectors, we would rely on the record that is now in
13 evidence and our prior papers.

14 THE COURT: Well, I had this question about the
15 adjournment of the assumption and assignment, objections that
16 remain. Does that have any effect on the sale itself, that
17 adjournment?

18 MR. BUTLER: No, I'm advised that we're -- there are
19 some conditions to close -- there are, I believe, some
20 conditions to close but I don't know if there's any issue with
21 having those determined in January, so everyone has told me.

22 THE COURT: Everyone's agreeing with that? Okay.
23 Does anyone want to be heard on this motion? All right. I
24 made it a little clearer in the order in the findings section
25 that the findings with regard to the assigned contracts in this

1 order don't pertain to the contracts covered by the objections
2 because that'll be decided in January or on a consensual basis.

3 And then there was one provision in here, I think
4 it's a typo, I just -- although, you know, sometimes these
5 orders are negotiated. If you go to page 13 of the proposed
6 order, which was attached to the response --

7 MR. BUTLER: Yes.

8 THE COURT: -- right before the heading assumption
9 and assignment it says, "Notwithstanding the above, nothing
10 herein shall be construed to permit a governmental agency to
11 obtain penalties from the buyers." And it says "for days
12 violation of environmental laws and regulations prior to
13 closing." Should that be, instead of "days", the selling
14 debtor entities violation?

15 MR. BUTLER: Let me just simply ask --

16 THE COURT: I just didn't understand why the word was
17 in --

18 MR. BUTLER: There clearly is a typo there. Let me
19 simply check that with --

20 THE COURT: Okay.

21 MR. BUTLER: I want to make sure it's appropriate
22 with the purchaser. Let me just check that.

23 THE COURT: All right. I mean, maybe there was some
24 information omitted, like, past days or, you know, twenty, but
25 my sense was probably someone wrote in shorthand debtors'

1 violation and it came as "days".

2 MR. BUTLER: Let me just check that, Your Honor, and
3 we'll submit it to chambers.

4 THE COURT: Okay. But otherwise, the order seemed
5 fine, and in light of the resolution of the objections, the
6 motions, statements in support of the sale, the lengthy sale
7 process, which culminated in this agreement, I'll approve the
8 motion.

9 MR. BUTLER: Thank you, Your Honor.

10 (Pause in proceedings)

11 MR. BUTLER: Your Honor, the next matter on the
12 agenda is matter number 5. This is our twenty-third omnibus
13 claims objection filed at docket 10982. Your Honor, this
14 motion is an omnibus objection that dealt with sixty-three
15 proofs of claim to which we had various suggestions lodged.
16 There were sixteen proofs of claim that we received responses
17 with respect to -- therefore, there are forty-seven proofs of
18 claim that there was no response filed that we're seeking
19 relief here today. With respect to the sixty-three claims in
20 the aggregate on the twenty-third omnibus claims objections,
21 those involved claims totaling approximately twenty-six million
22 dollars. As of last evening, we had received twelve formal
23 responses covering the sixteen proofs of claim I indicated.
24 Those involved liquidated claims of about 15.4 million, and
25 therefore as to those proofs of claim, we will, as we have in

1 the past, adjourn those to the claims track process and deal
2 with them in the claims track.

3 With respect to the remaining claims, the 47 proofs
4 of claim, they cover claims involving about 10.6 million.
5 Well, there's only three million dollars of relief in the
6 aggregate we're really seeking today; that's in two forms,
7 Your Honor. First, we're asking the Court to expunge 17 of
8 these claims with an asserted claim amount of about 1.9
9 million, and with the remaining 30 claims that assert claims of
10 about 8.7 million, we're asking the Court to reduce that from
11 8.7 in the aggregate to 7.6, which would involve a reduction of
12 about 1.1 million. And there is other relief being sought that
13 would modify the identity of the debtor against which the proof
14 of claim was asserted, the class, the amount of the claim and
15 similar relief.

16 So, Your Honor, with respect to this matter, we ask
17 you to enter relief today with respect to the forty-seven
18 claims. They did receive the particularized notice that is the
19 custom in these cases and they will receive particularized
20 notice of any decision Your Honor makes today with respect to
21 these claims.

22 THE COURT: Okay. Does anyone want to be heard on
23 this motion? All right. I'll grant the motion as modified in
24 light of the lack of an objection to the relief that's being
25 sought.

1 MR. BUTLER: Thank you, Your Honor. Your Honor,
2 matter number 6 on the agenda today is the steering sale
3 motion. This is filed at docket number 11390. The only
4 response filed to this is filed by another bidder at docket
5 number at docket number 11480 involving Sun Capital. That
6 entity is neither a -- as I understand is neither a creditor
7 nor equity holder of the debtors, and we're here today to deal
8 with the two-step sale process that we'd ask Your Honor to
9 consider in connection with the sale of the global steering
10 business.

11 Your Honor, this is a transaction that is at the core
12 of one of the three -- or the five principal transformation
13 objections we've had in this case, which is to rationalize our
14 product portfolio and footprint globally. And this was a
15 business that the company determined was not strategic to our
16 future and that was announced back on March 31st of 2006.
17 Having said that, the steering business is an important
18 business. It employs thousands of employees, including a very
19 significant number of employees represented by the UAW.

20 And the treatment of the steering business was one of
21 the principal elements negotiated in both the GM settlement and
22 in the memorandum of understanding between General Motors, UAW
23 and the debtors, which was previously approved by the Court.

24 Your Honor, this particular transaction today, or
25 we're asking the Court to consider today, are the bidding

1 procedures and approval of the bidding protection with respect
2 to the proposed purchaser. You know, the proposed purchaser,
3 Your Honor, is an entity called Steering Solutions Corporation,
4 and certain of its affiliates, which is an affiliate related to
5 Platinum, which has been the stalking horse bidder selected by
6 the company after a very lengthy process in which the company,
7 with Rothchild's assistance, had gone out and contacted over
8 ninety potential buyers and executed confidentiality agreements
9 with about thirty of those potential buyers over a very
10 extended period of time. It involved both an initial marketing
11 and a remarketing process as the company went through to
12 evaluate what would be an appropriate stalking horse to deal
13 with this transaction going forward. That involved both
14 socializing a prospective purchaser with the UAW, principally
15 as well as with General Motors, who is very much involved in
16 this transaction because of the supply agreement they needed to
17 work out with the purchaser and because, under the GM
18 settlement, a significant portion of the value that comes --
19 direct consideration that comes to Delphi in connection with
20 the sale of the steering business is through consideration that
21 is funded in part by General Motors in terms of some of the
22 working capital, about two-thirds of the working capital, that
23 will go with the business.

24 As I indicated, Your Honor, the proposed purchaser is
25 an affiliate of Platinum Equity, LLC. The transaction value in

1 the papers is 447 million dollars. That's comprised of 190
2 million dollars of assumed liabilities and restructuring costs
3 being borne by Steering Solutions and a transaction
4 facilitation agreement with General Motors, in which they're
5 paying 257 million dollars plus additional expenses and costs
6 that would otherwise be Delphi's obligations under the proposed
7 transaction agreement.

8 The breakup fee we're asking Your Honor to approve
9 today is 5.5 million dollars. This was reduced from six
10 million in negotiations between the creditors committee and the
11 purchaser which will obtain the committee's support of this
12 transaction. There's an alternative expense reimbursement
13 provision, which would be six million dollars if the breakup
14 fee is not paid or two million if the breakup fee is paid.

15 The series of events that give rise to the breakup
16 fee are fairly ordinary and customary and they're set forth in
17 the papers. There are some termination rights that would give
18 right to the expense reimbursement, and that would be if
19 closing hasn't occurred within 180 days of the sale approval
20 order or the sale approval order is not entered within ninety
21 days of the agreement.

22 I would point out, Your Honor, ninety days seems like
23 a long time under the proposed schedule here. Ninety days
24 actually occurs in early March and the sale hearing here is
25 currently schedule for February 21st. So while it seems like a

1 long time, in reality the order has to be entered within about
2 twenty days or so of the time that the sale hearing was
3 currently scheduled, and I just want the Court to be aware of
4 that.

5 The proposed schedule for the auction would be that
6 the bid deadline would be January 18th, 2008. The auction will
7 be held on January 28, 2008 and the sale hearing would be at
8 the February 21st omnibus. We do have, in these papers,
9 reserved our right that if there is no bid submitted --
10 qualified bid submitted by the bid deadline, we would have the
11 right to come to the court and ask Your Honor to schedule an
12 earlier off omnibus hearing provided we gave twenty days'
13 notice of that earlier hearing date and gave parties seven days
14 to object to the sale relief and an additional notice, which
15 may be necessary.

16 One of the things we need to -- we're trying to
17 coordinate is the timing of the completion of this transaction
18 along with the activities that the company would then, I
19 imagine -- they'd be involved in as we move forward to moving
20 towards the effective date of a plan should the plan that we
21 have filed be confirmed by the Court at the confirmation
22 hearing which begins on January 17th.

23 Your Honor, as I indicated, we have reviewed this
24 transaction with both our statutory committees. I believe the
25 transaction is supported by both committees. We had also

1 reviewed these matters clearly with the UAW and with General
2 Motors, who have reaffirmed to the debtors as recently as
3 yesterday that they are supportive of moving forward with a
4 Platinum entity as the stalking horse and with these bidding
5 procedures.

6 I think all four of those parties, the two statutory
7 committees, General Motors and the UAW -- I won't speak for the
8 UAW because -- and that's in a specific question but at least
9 the other three entities -- I think all of us would like to see
10 a robust auction process here, and if there's more value to be
11 obtained, then that is certainly value that we'd like to, for
12 the estate.

13 I would note the way in which this particular
14 transaction is structured. The first sixty million or so of
15 additional value would go exclusively to General Motors in
16 reduction of its obligations it's agreed to fund on behalf of
17 the debtors, and therefore we have paid particular attention to
18 General Motors' views on these issues. Given the amount of
19 financial support they are lending to this transaction, there
20 wouldn't be anything available for the estate generally other
21 than General Motors, and I'm not in any way diminishing the
22 opportunity to reduce the amount of payments GM has proposed to
23 make here. But there wouldn't be value to anyone else unless
24 the competing bids were well in excess of the sixty million
25 dollars.

1 As I indicated, Your Honor, the only --

2 THE COURT: Well, but there is a -- the breakup fee
3 gets paid, though.

4 MR. BUTLER: Yes, that's right, so it's 65, so it'd
5 need to be actually in excess of 65.5 million dollars.

6 THE COURT: Okay.

7 MR. BUTLER: So I had said in excess of sixty
8 million.

9 THE COURT: Okay.

10 MR. BUTLER: Your Honor, the only response we have
11 filed to this is a response of Steering Holding, LLC, an
12 unsuccessful stalking horse bidder who filed a response at
13 docket number 11480. In that response, they included an offer
14 that they had not previously made to the company. When the
15 company saw the filing, the company evaluated the offer, as it
16 indicated, in connection with various of the factors it took
17 into consideration. It consulted with both the UAW and General
18 Motors who, after reviewing the filing made by Steering
19 Holding, LLC, reaffirmed their support of moving forward with
20 the Steering Solutions stalking horse bid. And based on the
21 direct feedback from the UAW and General Motors and the
22 debtors' consideration of all the other factors, we concluded
23 that we would, in the exercise of our fiduciary
24 responsibilities, continue to move forward and support this
25 transaction, which we do here today, as we indicated we did in

1 our omnibus reply that we filed yesterday afternoon.

2 THE COURT: Let me make sure I understand what you
3 just said about GM's response. In the TFA, GM says that --
4 they confirm that they would consent to the Platinum agreement,
5 and they also say that they also consent to the bidding
6 process. However, the ultimate buyer other than Platinum, they
7 reserve their rights whether to consent to or not. And I take
8 it from what you just said that that's their position today as
9 well, that they haven't added, for example, Sun to the list
10 that they have already consented to.

11 MR. BUTLER: That's correct. Mr. Lemons is here on
12 behalf of GM.

13 THE COURT: Okay.

14 MR. LEMONS: Good morning, Your Honor. Robert Lemons
15 from Weil Gotshal on behalf of General Motors. That's correct,
16 Your Honor. At this point, GM has only consented to Platinum,
17 and as Mr. Butler correctly stated, supports moving forward
18 with Platinum as the stalking horse bidder. GM is, however,
19 you know, desirous of having a robust auction process and will
20 speak with Sun or any other potential or interested bidder
21 leading up to the auction to determine whether GM would consent
22 to them as a substitute purchaser.

23 THE COURT: Okay. Thank you. All right.

24 MR. BUTLER: So, Your Honor, that would be our
25 presentation. There are -- in connection and in support of

1 this motion, there are ten exhibits that we have prepared. One
2 is Mr. Sheehan's highly confidential declaration, Exhibit 1.
3 Exhibits 2 and 3 are the agreements. Exhibits 4 through 9 are
4 the court documents. And Exhibit 10 is the affidavit of
5 service in connection with this matter. I'd move the admission
6 of those documents.

7 (Mr. Sheehan's highly confidential declaration was hereby
8 received as Debtor's Exhibit 1 for identification, as of this
9 date.)

10 (Agreements were hereby received as Debtor's Exhibits 2 and 3
11 for identification, as of this date.)

12 (Court documents were hereby received as Debtor's Exhibits 4
13 through 9 for identification, as of this date.)

14 (Affidavit of service was hereby received as Debtor's Exhibit
15 10 for identification, as of this date.)

16 THE COURT: Okay. Does anyone their admission? Does
17 anyone want to cross-examine Mr. Sheehan on his affidavit?
18 Okay.

19 MR. BUTLER: Your Honor, that would be our
20 presentation subject to any comments Sun's counsel wants to
21 make on the record.

22 THE COURT: There was also an affidavit submitted by
23 a representative of Platinum but I didn't hear that in your
24 list.

25 MR. BUTLER: Oh, I'm sorry. There was a separate

1 affidavit by Platinum. I think they submitted -- they filed
2 that separately, Your Honor --

3 THE COURT: Separately. Okay.

4 MR. BUTLER: -- and I should -- as a matter of the
5 record, and I appreciate that, they did file that separate and
6 I would move that affidavit into evidence as well subject to
7 cross-examination.

8 (Affidavit by Platinum was hereby received as Debtor's Exhibit
9 11 for identification, as of this date.)

10 THE COURT: All right. Does anyone want to cross-
11 examine Platinum's representative on that? All right. So
12 that'll be admitted too.

13 MR. BUTLER: And that would be Exhibit number 11,
14 Your Honor.

15 THE COURT: Okay. Ms. Ceccotti, do you have --

16 MS. CECCOTTI: Yes. Good morning, Your Honor.
17 Babette Ceccotti for the UAW. Just to follow up and confirm
18 Mr. Butler's statements for the record, I would like the -- UAW
19 would like the Court to know that the Platinum group has
20 invested considerable time in talking to the union about the
21 future of the facilities, something that they view very
22 favorably. They have become very comfortable with Platinum as
23 a prospective purchaser and wishes to register their full
24 support for proceeding with Platinum as the stalking horse
25 bidder.

1 THE COURT: Okay. But the auction process going
2 forward is not an empty exercise. The union's still willing to
3 speak with qualified bidders?

4 MS. CECCOTTI: Union -- I'm sorry. The UAW certainly
5 understands that there's an auction process. They've been down
6 this road before and I believe the bidding procedures
7 appropriately reflect that there are matters that certainly
8 would have to be discussed with the union.

9 THE COURT: Okay.

10 MR. HERMAN: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. HERMAN: Neil Herman from Morgan Lewis and
13 Bockius on behalf of Sun Capital. Your Honor, Sun Capital is a
14 large private equity fund. It's familiar with the business,
15 familiar with the documents, familiar with the issues and, of
16 course, familiar with the auto business. Sun, in fact, owns
17 numerous auto suppliers. Sun also signed a confidentiality
18 agreement over a year ago and spent over a year working on this
19 matter. You have an affidavit that was submitted by Platinum
20 showing how much time and effort they spent on the case. I
21 think it's undisputed that my client also spent a significant
22 amount of time and effort on the case. We've spoken and met
23 with management, spoken and met with GM, spoken with the
24 unions. We also filed a prior bid and we also filed a bid
25 attached to our exhibit.

1 So, in terms of time and effort that people have put
2 in, I think we're on a fairly even playing field, but most
3 importantly, Your Honor, my client has filed a piece of paper
4 that attached the same asset purchase agreement as Platinum,
5 blacklined to show changes. The only changes that were made
6 were ten million dollars more in cash to the estate at the
7 closing, a reduction in the breakup fee by three million and a
8 reduction in the expense reimbursement by a million. When I
9 add that up, that's a fourteen million dollar swing in the
10 bids; everything else is exactly apples to apples. We also
11 filed yesterday bidding procedures that were blacklined and a
12 bidding procedures order that was blacklined. The sole change
13 was the name of the stalking horse.

14 We are adopting the identical timeline, the identical
15 process, the identical documents, so the only thing that's
16 different is the cash. In our view, the debtors' business
17 judgment, which normally is the test for today, should not be
18 given much weight because the only thing that's different is
19 the purchase price, and Your Honor is in a position to evaluate
20 the purchase price just as much as the debtors' management is.

21 Your Honor, if I could just address the standing
22 issue. I know that that's a key issue for the debtor; they've
23 mentioned it in their papers and they've mentioned it today.
24 On the standing issue, I have several responses. The first is
25 that, on page 47 of the debtors' emergency motion, it says that

1 the debtors have served the master service list, everyone who
2 filed the notice of appearance, and quote, "all entities known
3 to have expressed an interest in a transaction with respect to
4 the purchase assets during the past fourteen months" unquote.
5 In fact, they served Morgan Lewis, counsel for Sun, and they
6 served Sun.

7 Your Honor, I got invited to this party by the
8 debtor; Jack Butler sent me an invitation. I'm here to speak
9 at their invitation; they served us. They boast about it in
10 their papers. So, under the doctrines of waiver, estoppel and
11 issue preclusion, I find it hard to believe that, after saying
12 they've served all known parties with the motion to talk about
13 the bid procedures, we can't even be heard.

14 On the second point, Your Honor, the debtors' case
15 law is easily distinguishable. All of the cases they cite are
16 disgruntled bidders after an auction and after voluntarily
17 participating and they lose, then they complain about the
18 debtors' business judgment or the process. Here, this is the
19 bid procedures hearing. We're here to talk about what
20 protections to give the stalking horse and what procedures to
21 use. Those directly affect me as a bidder at the auction. I
22 am clearly in what Judge Walsh has called the zone of interest
23 to be protected. At a bidding procedures hearing, in fact,
24 Judge Walsh has said that it's the Court's duty to listen to
25 bidders and to protect bidders and their interest so that the

1 rules of the game are fair and there's an appearance of
2 fairness.

3 So I can certainly be here today to be heard on the
4 issue of what the rules are that are going to affect me at the
5 action. Yes, after the auction, if I lose, I voluntarily
6 participate, I can't come in here and complain about it. But
7 the auction hasn't happened yet. We're talking about how much
8 money the stalking horse is going to have to get as a breakup
9 fee and expense reimbursement, which comes ahead of my client
10 at the auction. We're talking about the rules that are going
11 to be imposed on me as a bidder. I clearly have standing; I'm
12 within the zone of interests.

13 Third, Your Honor, this is bankruptcy; there's no
14 jury here. You can easily weigh my arguments and ultimately
15 decide to give them whatever weight you decide or to reject
16 them out of hand. But I can at least speak today, in my view,
17 and you shouldn't attempt to just close the door in our face.

18 With respect to the actual merits, Your Honor, what I
19 have heard are really only two arguments on the merits. It
20 seems to me the debtors' entire argument comes out to standing,
21 but they have two other minor arguments that they suggest; the
22 first is the risk. The risk they mention is that GM has not
23 consented to my client. Well, my client spoke yesterday with
24 GM's businesspeople. I'm glad that their lawyer is here today
25 but their businesspeople asked us point-blank would we adopt

1 the identical supply agreement as Platinum. That was the only
2 issue of concern and we affirmatively said Sun Capital will
3 adopt the identical supply agreement as Platinum.

4 So it is my understanding that GM is comfortable with
5 both Platinum and Sun Capital, and the attempt to spin it that
6 they are not, I believe, is incorrect.

7 THE COURT: Well, but their lawyer just said that
8 they haven't confirmed that --

9 MR. HERMAN: Yeah, Your Honor, if they have a
10 businessperson here, we'd be more than happy to put them on the
11 stand for five minutes.

12 THE COURT: The lawyer is authorized to speak for his
13 client. There's a difference between your report about what
14 was said in a meeting as evidence and what a lawyer's been
15 instructed to say by his client.

16 MR. HERMAN: Your Honor, I also have with me today
17 representatives of Sun Capital who spoke with GM and were told
18 that GM -- by GM that they were comfortable with Sun Capital.
19 So I have witnesses here if you'd like to hear that evidence.

20 MR. LEMONS: Your Honor, I'll --

21 THE COURT: But that's hearsay too. I mean, I don't
22 think that would be --

23 MR. LEMONS: I don't know if you need to hear a
24 reply, Your Honor, but I would just reaffirm what I was
25 instructed by my client to report to the Court earlier today,

1 which is not that my client has consented but that my client
2 will continue to work with Sun or any other interested bidder
3 to see if my client would consent leading up to the auction.

4 THE COURT: Okay.

5 MR. HERMAN: And finally, Your Honor, my client has a
6 direct pecuniary interest in what happens here today. If we
7 give Platinum a 5.5 breakup fee and a 2 million dollar expense
8 reimbursement, that means that at every single round of the
9 auction --

10 THE COURT: No, I understand.

11 MR. HERMAN: -- my client is 7.5 million behind.
12 Now, normally that would not be a problem but they are getting
13 that huge multimillion dollar windfall in exchange for a one
14 dollar cash purchase price. My client is willing to do the
15 same thing for half that cost and for a ten million dollar
16 purchase price. We think the debtors' business judgment is
17 just simply wrong here.

18 Also, Your Honor, if we're going to just say that
19 this all about comfort level with Platinum, then we should stop
20 pretending that this is some sort of public auction and call it
21 what it is; it's a private sale to Platinum and no one else, no
22 matter what the bid (sic) is going to be entitled to bid.

23 So if comfort is such a valuable asset, they should
24 tell us what it's worth or just call it a private sale, but if
25 it's going to be a public auction and our bid is exactly the

1 same as theirs but it's fourteen million dollars different when
2 you add up all the cash and finish their expenses, then that
3 such carry the day. Now, Platinum is not prejudiced --

4 THE COURT: But don't the bidding procedures
5 expressly recognize the role of GM and the unions? It's not
6 just a cash bid bidding procedure.

7 MR. HERMAN: Your Honor, I'm telling you that my
8 client has told me that they have the support of GM; that's all
9 I can tell you.

10 THE COURT: Okay.

11 MR. BUTLER: Your Honor, our response to the
12 argument -- just let me go to the substance of the argument. I
13 find these discussions at this point in the process kind of
14 awkward because we, in standing up and opposing Sun's objection
15 today, don't intend, first of all, to denigrate Sun Capital,
16 and second, we hope that they will participate in the auction
17 process. So this is not, from the debtors' perspective,
18 construed as an attack against Sun.

19 Having said that, the facts are that the debtors have
20 a business judgment to exercise here and we've done it in two
21 respects. We considered a variety of factors when we got their
22 offer and evaluated very carefully the current views of both
23 General Motors and the UAW. You've heard them in the room
24 today represented by their counsel. They're totally consistent
25 with what the debtors were told and were considered by debtors'

1 management as we evaluated, as our fiduciary duties required
2 when unsolicited bids are submitted to the company, whether
3 submitted at any time, including in a response filed to the
4 Court. And we have done that and we believe that it's in the
5 debtors' interest and the estate's interest to move forward
6 with the process and with the Platinum entity as the stalking
7 horse.

8 I would point out to Your Honor that there is no
9 creditor in this case and no equity holder in this case who
10 objects to that business determination by the debtors, and it
11 has the affirmative support of General Motors and the UAW, the
12 two folks who are most directly implicated in the bidding
13 procedures, as Your Honor has outlined.

14 Second, I also would just point out, and it's covered
15 in the declaration, and that is that Sun is not new to the
16 scene here, as has been acknowledged. They have been involved
17 during this process, and at the end of the day, they had issues
18 that caused them to put their pens down and not complete the
19 transaction, and it is what it is. I mean, they ultimately --
20 you know, my view is from sort of an integrity of the bidding
21 procedures process. There was a robust marketing process here;
22 it involved over ninety entities.

23 At the end of the day, the process that reached a
24 transaction in which we had a comfort from UAW and comfort from
25 GM at the stalking horse level, I point that out, at the

1 stalking horse level to move forward, is with these entities.
2 Our hope is that Sun, if they have a better transaction, will
3 bid it and will be able to obtain the support of the UAW and
4 General Motors during the auction process. We also hope if
5 there's anyone else among the other ninety entities that they
6 will do the same.

7 But here today, the debtors are firmly resolved,
8 Your Honor, that based on our review of all of the applicable
9 factors, that the appropriate business judgment here is to move
10 forward with the disposition of this transaction as we
11 proposed.

12 And I would say one last thing. There's a lot more
13 at stake here than a dollar. This is a very complex
14 transaction for the most significant important asset the
15 company is not continuing with as part of its strategic plan.
16 Steering is a strategic asset for others. It is not a
17 strategic asset for Delphi but it's a good asset, and
18 ultimately we want to see that asset go forward. We want to
19 see employees continue to be employed. We want it to have the
20 support of the union and of General Motors, who needs to
21 provide a long term supply agreement, and there is an enormous
22 value to the company's reorganization in having this
23 transaction completed and having Steering, with its thousands
24 of employees, in a new home with a new owner that is supported
25 by the UAW and General Motors.

1 So there's a whole lot more at stake here in the
2 debtors' reorganization than a dollar, and the company believes
3 that we are on the right course here to move forward to a
4 bidding procedures -- or to an auction process. We'd ask
5 Your Honor that you deny the request by Sun and that you enter
6 the relief that the debtors are seeking here so we can move
7 forward with the auction process at which we hope Sun will
8 participate.

9 THE COURT: Okay.

10 MR. HERMAN: Your Honor, if I could just be given a
11 thirty second reply. It seems to me that most of the argument
12 that we have just heard is sale hearing arguments. The limited
13 issue today is that the debtor has the burden of proof.
14 Regardless of whether anybody objects, the debtor has the
15 burden of proof of showing that a seven and a half million
16 dollar breakup fee and expense reimbursement is reasonable
17 under the circumstances in exchange for the commitment of a one
18 million dollar cash purchase price plus the assumption of debt.
19 I have not heard any evidence on that point and, in our view,
20 that tips the scales too high in their favor, and the breakup
21 fee and expense reimbursements should be reduced substantially.

22 MR. WARNER: Your Honor, if I can just be heard. I'm
23 Michael Warner with Warner Stevens. I'm conflicts counsel to
24 the committee -- the creditors committee. Committee supports
25 the debtors' motion and supports the proposed bidding

1 procedures. We're pleased with the results that the debtor has
2 obtained and we'd like to see it go forward. With respect to
3 Sun, we hope they show up at the auction.

4 THE COURT: Okay. All right. I have before me the
5 first phase of the debtors' motion for approval of a proposed
6 transaction involving the sale of its steering and halfshaft
7 business in a related entry into a transaction facilitation
8 agreement with General Motors, the primary customer of that
9 business.

10 This aspect of the motion seeks approval of bidding
11 procedures and related notices as well as granting certain bid
12 protections to the entity that the debtors, after a lengthy
13 investment banking process, have chosen as their stalking horse
14 for the transaction, Platinum.

15 The relief sought today is unopposed by any creditor
16 or shareholder. It is objected to, however, by a competing
17 bidder, Sun. The debtor has responded to that objection on two
18 grounds and I'll discuss them in order. The first is that as a
19 mere competing bidder, Sun lacks standing to object to the
20 relief sought today. The second is that as an objective,
21 qualitative matter, the basis for Sun's objection lacks merit,
22 i.e., that it's a good exercise of the business judgment of the
23 debtors to proceed with the relief sought today to lock in
24 Platinum as a stalking horse for the relatively modest price of
25 the bidding protections rather than accept Sun's alternative

1 proposal, which was made in its objection.

2 As far as the standing objection is concerned, the
3 legal standing of a competing bidder to object to bidding
4 procedures and bid protections is somewhat ambiguous. Clearly,
5 when a debtor seeks relief out of the ordinary course in this
6 context, even though it is anticipating an auction down the
7 road, the motion for approval of bidding procedures and breakup
8 fees may turn itself into an auction because the Court needs to
9 approve the request, the request needs to meet the business
10 judgment standard and, if there is truly a higher and better
11 proposal that comes to light at the hearing on bidding
12 procedures, the debtors' business judgment needs to be
13 reevaluated.

14 So in that sense, obviously the Court and the parties
15 in interest listen to a competing bidder when it makes a
16 proposal that it contends is higher and better. And we'll
17 permit that bidder, obviously, to speak, and that's reflected
18 by the fact that the debtors and the committees have considered
19 the proposal that was made by Sun.

20 In addition, it's clear to me that, where bidding
21 procedures adversely affect the ability of another bidder, an
22 outside bidder, not the stalking horse, to compete and/or are
23 unfair or perceived to be unfair, the competing bidders have
24 legal standing to be heard as well as serving as a potential
25 data point. Thus, for example, if the bidding procedures

1 required prospective bidders to post a substantially higher
2 deposit than the current bidder or limited their ability to
3 conduct due diligence so that it set up an uneven playing
4 field, I believe that a prospective bidder would have standing
5 to object to proposed bidding procedures.

6 This proposal is -- or this objection, however, is
7 somewhat different than that. It questions the debtors'
8 business judgment about whether to accept one proposal over
9 another. Ultimately, that business judgment is something
10 that's exercised first by the debtor, then by those who have an
11 economic stake in the debtors' reorganization, i.e., the
12 creditors and shareholders, and ultimately by the Court.

13 I have serious questions whether, in that context, a
14 bidder has legal standing, and that goes not only for the
15 hearing before me but more importantly in respect of any appeal
16 to question the debtors' business judgment, as opposed to
17 serving as a data point for those who properly exercise
18 business judgment to consider in whether they want to proceed
19 with what they had noticed for approval.

20 So I believe as a legal matter, as opposed to as a
21 matter of informing the Court's judgment, Sun actually lacks
22 standing to make this type of objection. However, having heard
23 their proposal, I need to evaluate, as have the debtors and the
24 committees, whether in light of that proposal the debtors are
25 properly exercising their business judgment in connection with

1 the relief that's sought today.

2 So I've concluded that they have and the reason is, I
3 believe, fairly simple. It's argued by Sun that there is no
4 difference between its proposal and Platinum's, except that
5 Sun's proposal provides for more cash to the debtors' estate.
6 That is, it increases the amount of cash that the buyer is
7 providing and, in addition, reduces the amount of the bidding
8 protections so that more of a higher and better bid at an
9 auction, if one would ensue, would go to the debtors' estate in
10 the first instance, as opposed to the losing stalking horse.

11 However, I do not believe that is a fair comparison
12 of the two proposals. That is because it's clear that the vast
13 bulk of consideration in this transaction is coming through the
14 transaction facilitation agreement with GM. In addition, the
15 debtors acknowledge that the UAW has a significant say over
16 their ability, the debtors' ability, to transfer these assets
17 in the transaction.

18 It is clear from today's record that Platinum has the
19 support as a buyer here of GM and the UAW; that's made clear in
20 writing in the transaction facilitation agreement pursuant to
21 which GM consents to Steering Solutions and its affiliates,
22 i.e., Platinum, as the purchaser in connection with the
23 transaction, and GM's reservation of rights in the same
24 paragraph, paragraph 2, with regard to its consent to any other
25 bidder.

1 GM's counsel, clearly aware of the importance of this
2 issue, and I'll note that after a certain level GM is the prime
3 beneficiary of an auction, has, after speaking with his client,
4 confirmed to the Court that that is the state of play today as
5 well, i.e., GM is not prepared today to include not only
6 Platinum in paragraph 2 but also Sun. Rather, it's reserving
7 its rights as to Sun, although it encourages Sun to reach out
8 to it and to be in position to bid.

9 The value of the GM TFA is set forth in detail in
10 paragraph 34 of the motion, and in my view it's far superior to
11 the increased value that Sun has put on the table in its offer.
12 And while I hope that GM will become as comfortable with Sun as
13 it is currently with Platinum, the fact that it is not prepared
14 to say so today outweighs the additional consideration that Sun
15 has put in its offer.

16 Consequently, given the importance of this
17 transaction and the value ascribed to it in total, which
18 includes the value brought to it by GM, I believe the debtors
19 are properly exercising their business judgment to agree to the
20 bid protections in the form of a breakup fee and expense
21 reimbursement as set forth in the amended order that was
22 proposed.

23 As a percentage of the total transaction value, those
24 protections are reasonable and customary in this district and
25 elsewhere, and in light of the certainty that the Platinum

1 transaction has as compared to the remaining uncertainty that
2 the Sun proposal has, it's a valid exercise of the debtors'
3 business judgment to lock in Platinum as its stalking horse.

4 Clearly, any well advised buyer here, and I certainly
5 include Sun within that category, will have done, in addition
6 to their due diligence on their business, their due diligence
7 with GM and the unions. And I trust that, consistent with the
8 representations made to me today by both the union and GM, they
9 will be receptive to a good faith proposal by not only Sun but
10 other prospective bidders as well, and that by the time of the
11 auction this will be indeed an apples to apples auction where
12 the other conditions that I think are critical here, i.e., GM
13 and union support, will have already been nailed down. But
14 that's not the case today and that's why the debtors' motion
15 should be granted.

16 MR. BUTLER: Thank you, Your Honor. Your Honor, item
17 number 7 on the agenda, which is the last item on today's
18 agenda --

19 MR. HERMAN: Your Honor, if I could just ask that Sun
20 be excused. We're not involved in any of the remaining matter.

21 THE COURT: Oh, that's fine. Sure.

22 MR. HERMAN: Thank you.

23 THE COURT: Sure.

24 MR. BUTLER: Your Honor, item number 7 on today's
25 agenda is the debtors' motion for default judgment against

1 Furukawa. This is on status. Mr. Berger's handling this
2 matter for the debtors.

3 THE COURT: Okay.

4 MR. BERGER: Good morning, Judge.

5 THE COURT: Good morning.

6 MR. BERGER: Neil Berger, Togut Segal & Segal. On
7 Your Honor's agenda is the default application by the debtors,
8 Furukawa, and all the Furukawa matters, including that
9 application, Furukawa's response, a motion for a status
10 conference and the motion to dismiss, all related, in our view.
11 I neglected to add to the agenda letter, although Your Honor
12 ordered it -- is a status conference we confirmed and assured
13 counsel from Furukawa that this would serve also as a status
14 conference, and Furukawa is represented here today.

15 Your Honor did just so order our stipulation which
16 provides that the proceeding on the claim objection in the
17 affirmative claim for relief would proceed in this court.
18 There is a month by month discovery schedule for document
19 production, depositions and so on. Furukawa has witnesses that
20 it's going to bring stateside from Japan. There are some
21 translation issues that we're going to work through, both as to
22 testimony and to document production. Delphi is eager to get
23 to the substance of this and I think Furukawa now is at the
24 table and will be able to do that.

25 Your Honor scheduled an April 4 final pretrial

1 conference. Along the way, we will continue to explore ways to
2 try to resolve this. Beyond that, I don't know that there's
3 much more to report other than we are moving forward.

4 THE COURT: The stipulation resolved the default
5 issue?

6 MR. BERGER: In my view, it did. Mr. Connolly is
7 standing behind me. I hope it also resolved the dismissal
8 application as well. I'm waiting to hear from his client.

9 THE COURT: Okay. All right. So really there's not
10 much to -- I mean, there's nothing really to report today. Was
11 this just scheduled in case I didn't sign the stipulation?

12 MR. BERGER: The stipulation was so ordered when I
13 was out of the office, Your Honor.

14 THE COURT: Okay. All right.

15 MR. BERGER: Here I am today.

16 THE COURT: Okay.

17 MR. CONNOLLY: And, Your Honor, we had had a
18 conver -- Your Honor, Dennis Connolly here on behalf of the
19 Furukawa entities. Good morning.

20 THE COURT: Good morning.

21 MR. CONNOLLY: We had had conversations with
22 Mr. Berger about the stipulation and an attempt to try and get
23 past some of the procedural wrangling that I think has been
24 evident in the case, and obviously Furukawa's interest is in
25 moving the matter forward. I did want to report to the Court

1 that we are engaging in discovery now. It is a fairly
2 aggressive schedule. We intend on keeping that as best we can.
3 In our third party document, production request in particular
4 to GM that we may have to deal with, and in particular we
5 wanted to highlight for the Court that we do have Japanese
6 witnesses, so there will be some complexity, as Berger noted,
7 relative to translation issues, document translation and
8 witness issues, as well as the experts.

9 So what we wanted to do was to report to the Court.
10 I think the debtor wanted to have a status conference on this
11 matter as we began this process and we were happy to do that
12 and report to the Court where we are going forward. And
13 obviously, if there are problems, we will bring them to the
14 Court's attention, or if we believe that there is any issue
15 with respect to moving the case forward, we will bring that to
16 the Court's attention as well.

17 THE COURT: Okay. This matter isn't specifically
18 governed by the claims procedures but I think it may be useful,
19 particularly if you have your clients coming here, to consider
20 the mediation aspect of those procedures. That's been pretty
21 successful with other parties and I, you know, I'd recommend
22 you all consider that carefully.

23 MR. CONNOLLY: Your Honor, I'll pass that along to my
24 clients. I'm confident that they will be inclined to engage in
25 conversations to see if we cannot narrow the issues or resolve

1 the issues.

2 THE COURT: My experience is that, particularly in
3 this context, particularly with clients such as yours, they may
4 well not like the US litigation system --

5 MR. CONNOLLY: Indeed.

6 THE COURT: -- and they prefer mediation so --

7 MR. CONNOLLY: Indeed. I think that's correct,
8 Your Honor.

9 THE COURT: Okay.

10 MR. BERGER: Your Honor, you mentioned mediation once
11 before, before Mr. Connolly's involvement.

12 THE COURT: But that was when you guys were fighting
13 over withdrawal of the reference and everything else, so --

14 MR. BERGER: I stand, if only to reiterate our desire
15 to --

16 THE COURT: Okay. Good. Thank you.

17 MR. CONNOLLY: Thank you, Your Honor.

18 MR. BERGER: Thank you, Judge.

19 MR. BUTLER: Your Honor, that completes the matters
20 on today's agenda. Certain of the parties had asked for a
21 chambers conference with Your Honor to deal with some
22 confirmation matters. So that we could consult with the
23 parties, would it please the Court if we could do that around
24 11:30 if the Court has an opportunity to do that at that time
25 or --

1 THE COURT: Sure. That's fine or sooner, if you
2 wish.

3 MR. BUTLER: That's why I have a chance to consult
4 with the folks first.

5 THE COURT: Okay. That's fine. Why don't you just
6 come down to my chambers, then, when you're ready?

7 MR. BUTLER: Okay. Thank you, Your Honor.

8 THE COURT: Okay.

9 (Proceedings concluded: 11:06 AM)

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I N D E X

E X H I B I T S

DEBTOR'S	DESCRIPTION	PAGE
1	Highly confidential declaration of Mr. Sheehan	10
10	Affidavit of service	22
11	Affidavit by Platinum	23
2 through 5	Basic motion documents	10
6 through 11	Notices with respect to executory contracts	10
12 through 38	Various objections	10
39	Objection of sale motion resolved with Siemens	10

40 through 42	Affidavits	11
	relating to	
	service of all	
	matters in	
	connection with	
	hearing	
1	Mr. Sheehan's	22
	highly	
	confidential	
	declaration	
2 and 3	Agreement	22
4 through 9	Court documents	22

RULINGS

	Page	Line
Relief granted to debtor	6	24
to continue to add more		
than one hundred claims		
on a single omnibus		
claims objection		
Debtor's motion granted	7	18
to extend dates to file		
plan of reorganization		
and solicit acceptances		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Relief granted to debtor 14 22
as to forty-seven claims
Denial of request by Sun 39 3
granted and relief
sought by debtors granted
Debtor's previous 13 4
description of Entebbe
as a wholly owned
subsidiary of Renco
Group accepted

C E R T I F I C A T I O N

I, Clara Rubin, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Signature of Transcriber

____December 21, 2007____
Date

____CLARA RUBIN____

typed or printed name